

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MITCHELL

Plaintiff,

-v.-

9:06-cv-1350
(GLS)(RFT)

GLENN S. GOORD, Commissioner,
NYSDOCS, et al.

Defendants.

APPEARANCES:

OF COUNSEL:

PAUL MITCHELL
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HEATHER R. RUBENSTEIN
Assistant Attorney General

GARY L. SHARPE, U.S. DISTRICT JUDGE

ORDER

This action was commenced by plaintiff Paul Mitchell ("plaintiff" or "Mitchell") on November 6, 2006. The death of plaintiff was suggested by the plaintiff's mother to the Clerk's Office on June 18, 2008. Plaintiff's mother advised the clerk's office that she would be submitting a letter to the Court requesting an adjournment of the July 21, 2008 Final Pretrial Conference in order to have time to decide whether she wants to pursue this action on her son's behalf.

Rule 25(a) of the Federal Rules of Civil Procedure sets forth the procedure to be followed for the substitution of parties upon the death of a party. Rule 25(a)(1) provides that a motion for substitution may be filed by any party or by the “successors or representatives of the deceased party.” If a motion for substitution is not filed within ninety days after the death of a party has properly been suggested upon the record, “the action shall be dismissed as to the deceased party.”

On July 21, 2008, Judge Treece issued an order directing that Paul Mitchell’s successor or representative file a motion for substitution within ninety (90) days of the filing date of this Order or written notification regarding discontinuance of this matter. Failure to make a motion for substitution will lead to dismissal of this action. *See Dkt. No. 36.*

It has been more than ninety (90) days since the issuance of Judge Treece’s order. During such time, no person has filed a motion for substitution nor requested an extension of time to file a motion for substitution. Therefore, this case must be dismissed for failure to prosecute.

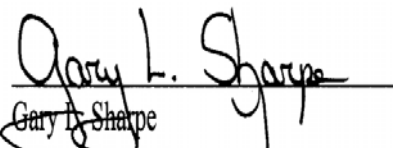
WHEREFORE, it is hereby

ORDERED, that this case be dismissed for failure to prosecute, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties by regular mail.

IT IS SO ORDERED.

Dated: November 10, 2008
Albany, New York



Gary L. Sharpe
U.S. District Judge